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BOOK REVIEWS

COLLIER ON BANKRUPTCY, Eleventh Edition, by Frank B. Gilbert. (Albany, N. Y.: Matthew Bender & Company, 1917, pp. 1797.)

It is probably true, as is often claimed, that "Collier on Bankruptcy" is the best of the text-books on the subject. If this be so, however, for we do not propose to argue the question, it is due to no superlative excellence on the part of "Collier," but rather to the greater faults in the others.

Our indictment is by no means confined to the works on Bankruptcy, but applies with comparatively few exceptions to the mass of new law books with which the market is flooded. No other science would tolerate, much less support, such a stream of unscientific, inaccurate and carelessly written treatises as that which is yearly poured out upon, and absorbed by, the students of the science of jurisprudence. The busy practitioner, too busy to stop for a thorough and critical examination, and anxious to keep his library strictly "up to date," buys without a murmur the book that is represented to him as "the last word on the subject." The temptation offered by such a gullible purchasing profession is too great; "the latest work on the subject" is too apt to sell, even if it be the most inaccurate, and so, year after year, the legal field is deluged with volumes which, under the name of text-books, impress the careful student as quasi-digests, hastily slung together from head-notes furnished by publishers, full of inconsistencies and contradictions, citing cases which are not in point or which have been overruled, and wholly lacking that logical and discriminating analysis which should characterize a text-book as distinguished from a mere compilation of decisions, good, bad and indifferent.

"Collier on Bankruptcy" is probably less guilty of these charges than the great majority of new law-books, but that it is not innocent a few excerpts, chosen at random, will suffice to prove.

Consider, for example, the inaccurate use of "date of adjudication" when "date of petition" is correct, with reference to the line of cleavage between provable and non-provable claims, property passing and not passing to the trustee, when *custodia legis* commences, the date as of which a discharge is effective, etc. This point, of little or no importance in many cases, may become vitally important in others. In many cases in the lower courts the error appeared, sometimes due to actual error in decision, but more frequent, where the distinction was not vital to the decision, through mere loose usage. Surely, however, since the decisions of the Supreme Court in *Everett v. Judson*, *Zavelo v. Reeves*, *Acme Harvester Co. v. Beekman Lumber Co.*, *Bailey v. Baker Ice Machine Co.* and other cases, there is no further excuse for inaccurate usage in a 1917 text-book. Yet, starting with the index, under the head of "Discharge: effect, in general," one finds: "relates back to date of adjudication . . . 403." On page 403: "The discharge, when granted, relates back to the date of *adjudication*;" this in spite of the

fact that *Zavelo v. Reeves* clearly held that discharge relates back to the date of petition; and in spite of the fact that this very sentence continues, accurately, "and property acquired by the bankrupt, intervening the *filing of the petition* and the granting of the discharge, is not appropriated to payment of his debts." The following sentence, however, contains a similar inaccuracy: "Thus, an assignment of unearned wages to secure a dischargeable debt creates no lien until the wages have been earned and cannot be enforced, as to wages earned after date of *adjudication*, after the bankrupt has been discharged." This is on page 403. Turning now to page 1062, one finds: "An assignment of future wages constitutes a valid lien which is not affected by the discharge in bankruptcy of the mortgagor." Rather recently, a practitioner, with this question of the assignment of future wages, advised his client in accordance with page 403, and was somewhat chagrined to discover the contrary doctrine stated, without qualification or cross-reference, in an entirely different part of the book.

Again, taking page 1112, one finds: "Under it (§ 70a) the trustee is vested with the title of the bankrupt to all property possessed by him at the date of the *adjudication*, etc." This in spite of *Everett v. Judson*, and other controlling cases, and in spite of the correct statement on page 403, quoted *supra*.

Page 972: "Implied Contracts.—This means the same as quasi-contracts."

Page 1073, discussing § 67e: "Mortgages to Secure Antecedent Debts.—These are void;" and on page 1070, still under § 67e: "nor is he (a purchaser) in good faith if he has knowledge of the insolvent's insolvency."

Page 1063, discussing § 67e: "'Within four months prior to filing the petition.'* * * But the words quoted above do not apply where the fraudulent transaction amounted to a voluntary gift; *nor where the transfer was made more than four months before the petition in bankruptcy was filed.*"

These random excerpts, being generalities which are ambiguous, misleading, or meaningless, as the case may be, simply serve to illustrate the general lack of scientific accuracy upon which we have commented.

One more example in conclusion, from page 979: "* * * substantially all liabilities either *ex contractu* or *ex delicto*, provided they are liquidated either before the bankruptcy, or, if not, *thereafter*, are provable debts under the terms of sub-section b" (i. e., § 63b). This is certainly misleadingly broad, in view of the fact that the Supreme Court has clearly held that § 63b adds nothing to the class of debts which may be proved under § 63a, and that § 63a nowhere permits proof of a "pure" tort claim, not in judgment at the date of petition.

In summary, "Collier on Bankruptcy" is a valuable book, but the user who seeks a thoroughly accurate knowledge of bankruptcy law must be prepared to make for himself, in large measure, that careful study and discriminating analysis of decisions which should have been the foundation of such a text-book.

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